IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.281 OF 2007

Kashinath B.Asbe & Ors. ...Appellants

vs.

Sitaram Anand Alwa and Ors. ...Respondents

Mr.Shiva Patil for the Appellants
Mr.Suresh Pakale for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : DECEMBER 5,2007.

P.C.:

1. Heard learned Advocate for the Appellants. The Appellants are the original plaintiffs. With a view to appreciate the submissions made by the Advocate for the Appellants, it is necessary to briefly refer to the facts of the case.

2. The suit land is situated at village Gopalpur, Taluka Pandharpur which was subsequently divided in two parts bearing survey No.5/2 and 5/1. A portion of the said land admeasuring 3-H and 58-R was acquired by the first Respondent for rehabilitation of the project affected persons. Out of the acquired land, the suit land of 78-R was allotted by the fifth Respondent to Talabai Dashrath Gulve, the mother of the original third Defendant. The said Talabai executed a sale deed in respect of the suit land in favour of the second defendant and the second defendant has sold the suit land to the first defendant. The contention of the Appellant is that

the allotment of the suit land by the State Government in favour of the mother of the third defendant is not legal and proper and consequently subsequent transferees of the allottee have no right, title or interest in respect of the suit land. The contention of the Appellants is that they are in possession of the suit land, as out of the acquired land, some portion was released by the State Government in their favour.

3. The trial court dismissed the suit and the Appellate Court confirmed the decree of the trial court. The courts below found that there was no documentary evidence on record to show that a portion of the suit land was released from acquisition. In the circumstances, the courts below found that the Appellants have lost their title by virtue of acquisition and were not having locus to file the suit. Moreover, the courts below held that the suit is hit by section 22 of the Maharashtra Project Affected Persons Act,1986.

4. The submission of the Advocate for the Appellants is that documents evidencing the release of a part of the acquired land by the State Government was produced before the trial court. However, the Appellate Court has erroneously observed that no such documentary evidence was produced. The submission is that the bar under section 22 of the said Act is not attracted considering the challenge in the suit.

4. I have given careful consideration to the submissions of the Advocates for the Appellants. The trial court found that a handwritten copy of a letter allegedly disclosing the exclusion of the area of 58-R from acquisition was produced by the Appellants. The said document was obviously not admissible in evidence. Apart from producing the said document on record which was not admissible in evidence, no other document was produced by the Appellants to show that a part of the acquired land was released. Therefore, both the courts were right in holding that there was no evidence to show that a part of the suit land was released from acquisition and therefore vesting of the said land in favour of the State Government is admitted. There was no challenge to the acquisition proceeding by the Appellants and in view of the settled position of law, the acquisition proceeding could not have been challenged by filing a civil suit. Considering these aspects, the courts below have rightly held that the Appellants have no locus to challenge the allotment of the acquired land made by the State Government and further transfers made by the allottee.

5. In view of the concurrent findings of fact, no substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE